Supreme Court, U.S.
FILED

NO. 93-2080 JUN 21 1994

OFFICE OF THE CLERK

In the Supreme Court of the United States

October Term, 1994

BEATRICE HENDERSON, ANGELA LUCILLE HILL, CAROL LYNN BOONE AND ROGER A. HENDERSON,
Plaintiffs-Petitioners

versus

UNITED STATES ARMY CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY through MICHAEL P.W. STONE, SECRETARY OF THE ARMY,
Defendant-Appellee

On Appeal from the United States Court of Appeals
for the Fifth Circuit

Petition for Writ of Certiorari

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37 pp

QUESTION PRESENTED FOR REVIEW

Whether the descendants of a seaman employee of the United States Army Corps of Engineers, Department of the Army, are precluded from asserting admiralty, general maritime law and statutory tort remedies against the decedent's employer seeking damages resulting from the seaman employee's job-related, accidental death.

LIST OF INTERESTED PARTIES

Petitioners list the following parties and persons who have an interest in the outcome of this case.

1. Plaintiffs-Petitioners,
   Beatrice Henderson
   Angela Lucille Hill
   Carol Lynn Boone
   Roger A. Henderson

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   Department of the Army

6. Janet Reno, Attorney General,
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REFERENCE TO OFFICIAL/UNOFFICIAL REPORTS

The opinions and decisions delivered by the lower courts in the present case have not been published in any official or unofficial report. However, the District Court, in ruling on defendant's Motion to Dismiss, adopted by reference its prior ruling in the matter styled, "Armstrong v. United States Army Corps of Engineers" lodged in the United States District Court for the Eastern District of Louisiana, bearing Civil Action No. 91-2808, which opinion and ruling was subsequently published at 1992 AMC 866.

STATEMENT OF JURISDICTION

This Honorable Court has jurisdiction over this Petition pursuant to the Rules of the Supreme Court of the United States, Rule 10, and 28 U.S.C. §1254. A final judgment was rendered by the United States District Court for the Eastern District of Louisiana on May 26, 1993 against petitioners, Beatrice Henderson, Angela Lucille Hill, Carolyn Lynn Boone and Roger Henderson and in favor of the defendant, United States Army Corps of Engineers, Department of the Army, dismissing plaintiffs-petitioners' Complaint with prejudice (judgment entered May 27, 1993). Said judgment was affirmed on appeal to the United States Court of Appeals for the Fifth Circuit in judgment rendered and entered March 23, 1994.

STATUTES INVOLVED IN THE CASE

UNITED STATES CODE ANNOTATED
TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES
PART III--EMPLOYEES
SUBPART G--INSURANCE AND ANNUITIES
CHAPTER 81--COMPENSATION FOR WORK INJURIES
SUBCHAPTER I--GENERALLY

§ 8116. Limitations on right to receive compensation

(a) While an employee is receiving compensation under this subchapter, or if he has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, he may not receive salary, pay, or remuneration of any type from the United States, except--

(1) in return for service actually performed;

(2) pension for service in the Army, Navy, or Air Force;

(3) other benefits administered by the Department of Veterans Affairs unless such benefits are payable for the same injury or the same death; and

(4) retired pay, retirement pay, retainer pay, or equivalent pay for service in the Armed Forces or other uniformed services,

subject to the reduction of such pay in accordance with section 5532(b) of title 5, United States Code.

However, eligibility for or receipt of benefits under subchapter III of chapter 83 of this title, or another retirement system for employees of the Government, does not impair the right of the employee to compensation for scheduled disabilities specified by section 8107(c) of this title.

(b) An individual entitled to benefits under this subchapter because of his injury, or because of the death of an employee, who also is entitled to receive from the United States under a provision of statute other than this subchapter payments or benefits for that injury or death (except proceeds of an insurance policy), because of service by him (or in the case of death, by the deceased) as an employee or in the armed forces, shall elect which benefits he will receive. The individual shall make the election within 1 year after the injury or death or within a further time allowed for good cause by the Secretary of Labor. The election when made is irrevocable, except as otherwise provided by statute.

(c) The liability of the United States or an instrumentality

thereof under this subchapter or any extension thereof with respect to the injury or death of an employee is exclusive and instead of all other liability of the United States or the instrumentality to the employee, his legal representative, spouse, dependents, next of kin, and any other person otherwise entitled to recover damages from the United States or the instrumentality because of the injury or death in a direct judicial proceeding, in a civil action, or in admiralty, or by an administrative or judicial proceeding under a workmen's compensation statute or under a Federal tort liability statute. However, this subsection does not apply to a master or a member of a crew of a vessel.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 542; Pub.L. 90-83, § 1(56), Sept. 11, 1967, 81 Stat. 210; Pub.L. 93-416, § 9(a), Sept. 7, 1974, 88 Stat. 1145.

§ 8150. Effect on other statutes

(a) This subchapter does not affect the maritime rights and remedies of a master or member of the crew of a vessel.

(b) Section 8141 of this title and section 9441 of title 10 do not confer military or veteran status on any individual.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 555.

STATEMENT OF THE CASE

Petitioners' husband and father, Mr. Roger Henderson, was at all times relevant hereto employed as a deckhand by the United States Army Corps of Engineers, Department of the Army (hereinafter "Corps of Engineers"). On or about June 9, 1992, Mr. Henderson was assigned to and working aboard a Corps of Engineers pushboat, the M/V KENT, and the barges in its tow, then located at the Bayou Bouef Lock in Morgan City, Louisiana. At some point while the vessel was navigating the lock, Mr. Henderson apparently fell or was knocked from the vessel(s) into the water, and was subsequently drowned.

Petitioners, Angela Lucille Hill, Carol Lynn Boone and Roger A. Henderson, filed suit against the United States Army Corps of Engineers arising from the drowning death of their father, Mr. Henderson. Jurisdiction in the federal district court was founded upon the admiralty and general maritime law subject matter jurisdiction provided by 28 U.S.C. §1333 and, alternatively, subject matter jurisdiction conferred by 28 U.S.C. §1346(b). Petitioners asserted liability in the Corps of Engineers under

multiple theories of liability, including the Jones Act and the general maritime law, alleging that their father's death was caused by the negligence of the Corps of Engineers and the unseaworthiness of the vessel to which he was assigned. The decedent's wife, Beatrice Henderson, thereafter filed suit on the same cause of action, and both actions were subsequently consolidated in the court of the Honorable Martin L. C. Feldman, Judge, United States District Court for the Eastern District of Louisiana.

Defendant, the Corps of Engineers, filed its Motion to Dismiss Plaintiffs' Complaint on April 23, 1993. Defendant sought dismissal of plaintiff's claims on grounds that the Complaint failed to state a claim upon which relief might be granted and that the District Court lacked subject matter jurisdiction, due to the exclusivity provisions of the Federal Employee Compensation Act (hereinafter "FECA"), 5 U.S.C. §8101, et seq. Pursuant to FECA and its judicial gloss, defendant asserted, the petitioners are precluded from bringing a tort suit against the Corps of Engineers for their husband and father's death.

The facts regarding Mr. Henderson's employment status with the Corps of Engineers and that he was engaged within the scope of his employment for the Corps of Engineers at the time of his drowning, were stipulated for purposes of the Motion to Dismiss. Thus, the issue before the District Court was one solely of law.

Judge Feldman, though expressing a certain bewilderment as to the state of the law and jurisprudence on the instant issue, found himself "bound to follow the interpretations announced by the Supreme Court and as articulated by the Fifth Circuit," and granted defendant's Motion. (See, Order and Reasons entered in Armstrong v. United States Army Corps of Engineers, 1992 AMC 866 (E.D. La 1991), adopted herein, at Appendix.) Order and Judgment dismissing petitioners' Complaint were entered May 25, 1993. (Appendix.) Judge Feldman's ruling was upheld on appeal to the United States Court of Appeals for the Fifth Circuit. (Appendix.)

Petitioners recognize that under existing federal case-law, their sole remedy against the Corps of Engineers is limited to that

prescribed by FECA. However, the existing case-law flies in the face of explicit statutory language contained in two separate sections of FECA, and has been the subject of statements of judicial dissatisfaction and multiple cases of bewilderment. Petitioners submit that the issue of whether FECA prescribes an exclusive remedy for civilian seamen on public vessels is ripe for reconsideration and re-evaluation.

ARGUMENT

I. THE PLAIN LANGUAGE OF FECA EXPRESSLY EXCLUDES ITS APPLICATION TO PETITIONERS' DECEDENT

The exclusive remedy provision of FECA is contained within Section 8116 of the Act and states, in pertinent part, the following:

> (c) The liability of the United States or an instrumentality thereof under this subchapter or any extension thereof is exclusive and instead of all other liability of the United States or the instrumentality to the employee, his legal representative, spouse, dependents, next of kin, and any other person otherwise entitled to recover damages from the United States or the instrumentality because of the injury or death in a direct judicial proceeding, in a civil action, or in admiralty, or by an administrative or judicial proceeding under a workmen's compensation statute or under a Federal tort liability statute. **However, this subsection does not apply to a master or member of a crew of a vessel.**

5 U.S.C. §8116(c) (emphasis ours).

To paraphrase Judge Nelson's dissent in Turner v. Tennessee Valley Authority, 859 F.2d 412 (6th Cir. 1988), were it not for the statutory gloss provided by a deeply divided Supreme Court in Johansen v. United States, 343 U.S. 427, 72 S.Ct. 849,

96 L.Ed. 1051 (1952), and not re-evaluated by the Supreme Court since 1959, we doubt that it would occur to many people, on simply reading the FECA statute, that Congress did not intend a master or member of a crew of a vessel to be exempt from the exclusive remedy provision of 5 U.S.C. Section 8116(c). Judge Nelson's comments are supported by the well-worn rules of statutory interpretation.

In construing statutory provisions, courts must first consider the text of the statute. See, Reiter v. Sonotone Corporation, 442 U.S. 330, 337, 99 S.Ct. 2326, 2330, 60 L.Ed.2d 931 (1979). It is well-settled that the plain language of a statute provides the best evidence of legislative intent. See, INS v. Cardozza-Fonseca, 480 U.S. 421, 431-32, 107 S.Ct. 1207, 1212-1213, 94 L.Ed.2d 434 (1987); Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-43, 104 S.Ct. 2778, 2781-82, 81 L.Ed.2d 694 (1984). Indeed, courts are bound to interpret a statute according to its plain language absent a clearly expressed legislative intent to the contrary. See, Consumer Product Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102,

108, 100 S.Ct. 2051, 2056, 64 L.Ed.2d 766 (1980); In re Co Petro Marketing Group, Inc., 680 F.2d 566, 570 (9th Cir. 1982). Actually, where the language of a statute is a clear expression of a congressional intent, the court need not resort to legislative history at all. See, United States v. Rush, 874 F.2d 1513, 1514 (11th Cir. 1989).

The plain language of the exclusivity provision exempts its application to seamen, such as petitioners' decedent. Moreover, an interpretation of the provision which ignores that exemption contravenes the rules of statutory interpretation. A court "should avoid an interpretation of a statute that renders any part of it superfluous and does not give effect to all of the words used by Congress." Beisler v. Commissioner, 814 F.2d 1304, 1307 (9th Cir. 1978)(en banc). In accordance with common practice, the statute first expresses the general rule of universal applicability followed by the exceptions to the general rule. If the language containing the exception does not mean what it says, then its inclusion in the statute is superfluous. Petitioners submit, therefore, that the exemption for a master of member of a crew of

a vessel should be accorded its plain, ordinary and unambiguous meaning.

The manifestly expressed will of Congress to carve out an exception for masters and crew members is also contained in Section 8150 of the FECA statute which provides in pertinent part:

> § 8150. Effect on other statutes
>
> (a) This subchapter does not affect the maritime rights and remedies of a master or member of the crew of a vessel.

5 U.S.C. §8150. The plain language of these provisions evidence the unambiguous, clearly expressed intent of Congress that the maritime rights and remedies of government employed seaman are not to be affected, limited or excluded by the provisions of FECA.

Moreover, even though resort to legislative history is not necessary in this case, a review of same, in any event, only supports the proposition that Congress intended no delimitation of maritime rights and remedies in passing FECA. In fact, Congress expressly refused the administration's specific request that such maritime rights be foreclosed by FECA. Justice Black, writing in dissent of the majority opinion in Johansen, supra, succinctly

reported the following:

> The Court's holding is as unique as the reasoning behind it. Time and time again during the last thirty years other federal courts have allowed injured employees to take their pick--receive compensation benefits, or sue for damages under the Public Vessels or some other Act. Moreover, the Court gives the Government precisely what Congress, after debate, refused to give in 1949. Government representatives then asked Congress to make the Compensation Act 'exclusive, and in place of all other liability of the United States.' The House yielded to this request. The House Report favoring the change stated that when the Compensation Act was enacted in 1916 a 'provision making the Compensation remedy exclusive apparently was then not deemed by the Congress to be necessary.' The Report also stated that such a provision was now needed because of acts such as the Public Vessels Act which 'in general terms' authorize the bringing of damage suits against the Government. The Senate refused to grant the Government's request and prevailed upon the House to accept the present provision of the Act which states that: 'Nothing contained in this Act shall be construed to affect any maritime rights and remedies of a master or member of the crew of any vessel.' This Senate modification of the Bill, as it had passed the House, was offered by Senator Morse and accepted by Senator Douglas who was in charge of the bill. In offering this modification, Senator Morse said: 'Under existing law, Government-employed seamen have been accorded the right to assert their maritime rights against the United States under the Suits in Admiralty Act and Public Vessels Act * * *. I feel they should not be deprived of benefits they have

> enjoyed for many years without opportunity to have their arguments carefully considered by the appropriate committees of the Congress * * *.' 95 Cong.Rec. 13608. Senator Douglas agreed to the modification, stating that 'The primary consideration for accepting the Senator's amendments preserving the maritime rights and other statutory remedies of seamen is the fact that no hearings were held, no arguments were heard, and no discussion was had on this aspect of the pending bill.' 95 Cong.Rec. 13609.
>
> **I do not think this Court should deprive these seamen of rights which the Congress of 1925 gave them and the Congress of 1949 refused to take away.**

Johansen, 343 U.S. 427, 442-43, 72 S.Ct. 849, 858-59, 96 L.Ed. 1051 (1952)(emphasis ours).

In light of the foregoing, petitioners submit that the statutory language of FECA should not and cannot be interpreted to strip government employed seamen of their Jones Act and other statutory and general maritime law causes-of-action. Such a result cannot be supported under the express language of FECA.

II. A REVIEW OF THE CASE-LAW IS APPROPRIATE

The statutory exclusion for masters and crew members is as plain as day. Not surprisingly, the case-law ignoring the

exclusionary language has been judicially questioned. In Flippo v. Tennessee Valley Authority, 486 F.2d 612 (5th Cir. 1973) Chief Judge Brown felt compelled by precedent to affirm the District Court's dismissal of a seaman's claim against his employer, the Tennessee Valley Authority, based on the exclusivity provision of FECA. Nonetheless, in his opinion Judge Brown stated:

> [W]e confess a certain bewilderment as to how the plain language of the 1949 Amendment to FECA cuts off substantial rights recognized under the Maritime Law *vis-a-vis* a seaman employee...

Flippo, 486 F.2d at 612. Judge Nelson writing in dissent of the majority decision in Turner v. Tennessee Valley Authority, 859 F.2d 412 (6th Cir. 1988) (the majority concluding that FECA provides the exclusive remedy for seaman employed by the TVA), questioned how the courts could consistently disregard explicit statutory language included for a purpose by Congress. Turner, 859 F.2d at 416-419. And the able District Judge whose decision is here on appeal has made a similar confession. Judge Feldman announced in Armstrong v. United States Army Corps of Engineers, 1992 AMC 866 (E.D. La 1991) (the reasoning of which was adopted by reference in the Order of Dismissal below) that he

shared Judge Brown's bewilderment, stating:

> This Court agrees with the plaintiff to the extent that the jurisprudence appears to have ignored the statutory text for nearly forty years. Like the Fifth Circuit in Flippo, this Court expresses "a certain bewilderment" as to how the clear exception for seaman in 5 U.S.C. §8116(c) has been read out of the statute.

Armstrong, 1992 AMC at 866.

Petitioners submit that the time is right for reconsideration of the case-law concluding that FECA forecloses the statutory and General Maritime Law rights and remedies of government employed seaman. A correct and proper interpretation of the provisions can yield but one result, that FECA, rather than delimiting such rights, explicitly and specifically preserves whatever such rights are vested in government employed seaman.

CONCLUSION

Plaintiffs-petitioners respectfully request reconsideration of the decision of the District Court and, in effect, the jurisprudential conclusion that the provisions of the Federal Employee Compensation Act forecloses their husband and father's significant statutory and General Maritime Law causes of action. A fair and honest interpretation of provisions of FECA cannot support the jurisprudential conclusion and should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that I have on this 21st day of June, 1994, served the foregoing Petition for Writ of Certiorari on all counsel of record, as follows: Janet Reno, Attorney General, Main Justice Building, 10th and Constitution N.W., Washington, D.C. 20530, telephone (202)514-2001; Robert Boitman, United States Attorney, 501 Magazine Street, New Orleans, Louisiana 70130, telephone (504)589-2921; Ruth M. Force, Assistant United States Attorney, 501 Magazine Street, New Orleans, Louisiana 70130, telephone (504)589-2921; Mee Lon Lam, Trial Attorney, Torts Branch, Civil Division, United States Attorney's Office, Department of Justice, P.O. Box 14271, Washington, D.C. 20044-4271, telephone (202)616-4029; and, the Solicitor General, Department of Justice, Washington, D.C. 20530, by placing a copy of same in the United States Mail, properly addressed and first class postage prepaid, or by hand delivery.

_____

LAURENCE E. BEST

APPENDIX

1. MINUTE ENTRY dated May 24, 1993, dismissing plaintiffs-petitioners Complaint. 16

2. JUDGMENT dated May 26, 1993, dismissing plaintiffs-petitioners Complaint. 17

3. ORDER AND REASONS adopted by the District Court in dismissing plaintiffs-petitioners Complaint. 18

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MINUTE ENTRY
FELDMAN, J.
May 24, 1993

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

ANGELA LUCILLE HILL, ET AL	CIVIL ACTION
VERSUS	NO. 93-0357
UNITED STATES OF AMERICA	SECTION "F"

IT IS ORDERED:

The defendant's motion to dismiss the plaintiffs' complaint is GRANTED. See Johansen v. United States, 343 U.S. 427 (1952); Armstrong v. United States Army Corps of Engineers, 192 AMC 866 (E.D.La. 1991).[1]

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[1]Filed in United States District Court for the Eastern District of Louisiana May 25, 1993. Date of Entry: May 26, 1993.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

ANGELA HILL, ET AL	CIVIL ACTION
VERSUS	NO. 93-357 C/W 93-1042
UNITED STATES OF AMERICA	SECTION "F"

JUDGMENT

For the written reasons of the Court on file herein, accordingly;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendant, United States of America, and against plaintiffs, Angela Hill, Carol Boone, Roger Henderson and Beatrice Henderson, dismissing plaintiffs' suit.

New Orleans, Louisiana, this 26th day of May, 1993.

/s/ Martin L.C. Feldman[2]

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[2]Filed in the United States District Court for the Eastern District of Louisiana May 27, 1993. Date of Entry: May 27, 1993.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

MELODY STEWART ARMSTRONG, ET AL

CIVIL ACTION

VERSUS NO. 91-2808

SECTION "F"

UNITED STATES ARMY CORPS OF ENGINEERS

ORDER AND REASONS

Before the Court is the United States' motion to dismiss for lack of subject matter jurisdiction and for Rule 11 sanctions. For the reasons that follow, the motion is GRANTED in part and DENIED in part.

For the purposes of this motion, the facts are undisputed. George Stewart, Jr. was a civil service employee of the United States Army Corps of Engineers. He worked as a deckhand. While acting within the scope of his employment, Mr. Stewart fell into the Mississippi River and drowned. His children sued the Corps under the Jones Act, Suits in Admiralty Act, General Maritime Law, and state law.

I. Jurisdiction

The doctrine of sovereign immunity is well-known and part

of our constitutional structure. "It renders the United States, its departments, and its employees in their official capacities as agents of the United States immune from suit except as the United States has consented and sued." Williamson v. U.S. Dep't of Agriculture, 815 F.d 368, 373 (5 Cir. 1987). The Federal Employees Compensation Act, 5 U.S.C. §8101 et. seq. (West 1980), waives the sovereign immunity of the United States, creating a compensation system for federal employees who are injured on the job. The Act is the exclusive remedy for injured federal employees:

> The liability of the United States or an instrumentality thereof under this subchapter... with respect to the injury or death of an employee is exclusive and instead of all other liability of the United States or the instrumentality to the employee, his legal representative, spouse,...and any other person entitled to recover damages from the United States...However, this subsection does not apply to a master or a member of a crew of a vessel. (emphasis added).

The United States, therefore, in making the FECA the exclusive remedy for injured federal employees, maintained its sovereign immunity as to any other suit for damages.

Despite the apparent statutory exception for seamen, the

Supreme Court, over a vigorous dissent, applied the FECA to federal maritime workers. In Johansen v. United States, 343 U.S. 427, 440 (1952), the Supreme Court held that the FECA "is the exclusive remedy for civilian seamen on public vessels." Seven years later, in Patterson v. United States, 359 U.S. 495 (1959) (per curiam), the Supreme Court upheld Johansen and extended it to include "vessels...engaged in merchant service." The Court refused to reconsider its conclusion that the FECA was a federal maritime worker's exclusive remedy for injuries or death.

Other federal courts have diligently followed the instruction of Johansen and Patterson. According to the Sixth Circuit,

> [t]he federal courts which have considered the issue have consistently adhered to the Supreme Court's mandate in Johansen and Patterson designating the FECA as the exclusive remedy available for injuries sustained by federal employees in the course of their employment duties.

Turner v. Tennessee Valley Authority, 859 F.2d 412, 414 (6 Cir. 1988). The Fifth Circuit is no exception. It has held that federal maritime workers may only recover benefits under the FECA for their injuries or death. See Johnson v. United States, 402 F.2d 778, 779 (5 Cir. 1968) ("a seaman who was injured in the course

of his employment as a federal employee... is limited to the benefits provided under the terms of the [FECA] and, therefore, such seaman may not maintain a suit for damages against the government"); see also Flippo v. Tennessee Valley Authority, 486 F.2d 612, 613 (5 Cir. 1973) (per curiam). In a more recent case, a district court concluded that under the FECA, "it is well settled that a government employee may not sue the United States under the Public Vessels Act, the Suits in Admiralty Act, the Federal Torts Claims Act, the Jones Act, or the General Maritime Law." White v. Marine Transport Lines, Inc., 711 F.Supp. 335, 336 (E.D. Tex. 1989) (emphasis in original) (footnotes omitted).

In this case, the facts are undisputed: the plaintiff was a federal maritime employee who died in the course of his employment. His legal representatives sued the government for damages under the Jones Act, Suits in Admiralty Act, General Maritime Law, and state law. Petitioners concede that the present case literature prohibits them from suing for damages, leaving FECA as their exclusive remedy. They argue, however, that the statutory language clearly excepts seamen (masters and members

of a crew) from the Act's coverage, and that the jurisprudence renders this exception meaningless.[3]

This Court agrees with the plaintiffs to the extent that the jurisprudence appears to have ignored the statutory text for nearly forty years. Like the Fifth Circuit in Flippo, this Court expresses "a certain bewilderment" as to how the clear exception for seamen in 5 U.S.C. §8116(c) has been read out of the statute. This Court, however, is bound to follow the interpretations announced by the Supreme Court and as articulated by the Fifth Circuit. As a result, the Court finds that the plaintiffs' sole remedy is under the FECA; all claims for damages against the United States are barred, pursuant to Johansen, Patterson and their progeny. Consequently, this Court does not have subject matter jurisdiction to decide these issues.

The Court, however, holds that the plaintiffs conduct is not sanctionable under Rule 11. Rule 11 clearly states that sanctions are inappropriate where the party is making "a good faith argument

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[3]The plaintiffs also advance arguments relying on congressional intent and statutory interpretation.

for the extension, modification, or reversal of existing law." Since the plaintiff argued in good faith for a modification or reversal of existing law, this Court will not sanction counsel.

Accordingly, the Government's Motion to Dismiss is GRANTED IN PART, dismissing the plaintiffs' claims for damages, and DENIED IN PART, as to sanctions.

New Orleans, Louisiana, October 23, 1991.

/s/ Martin L.C. Feldman [4]

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[4]Filed in the United States District Court for the Eastern District of Louisiana October 29, 1991. Date of Entry: October 29, 1991.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3398
Conference Calendar

ANGELA LUCILLE HILL, ET AL,

Plaintiffs-Appellants,

versus

UNITED STATES ARMY CORPS OF ENGINEERS,
DEPARTMENT OF THE ARMY,
through MICHAEL P.W. STONE,
SECRETARY OF THE ARMY,

Defendant-Appellee

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA 93-357 F

Before KING, DAVIS and DeMOSS, Circuit Judges.

PER CURIAM:*

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

The district court's dismissal of the suit was correct. See Johansen v. United States, 343 U.S. 427, 72 S.Ct. 849, 96 L.Ed. 1051 (1952); Patterson v. United States, 359 U.S. 495, 79 S.Ct. 936, 3 L.Ed.2d 971 (1959); Amell v. United States, 384 U.S. 158, 86 S.Ct. 1384, 16 L.Ed.2d 445 (1966); Johnson v. United States, 402 F.2d 778 (5th Cir. 1968), cert. denied, 394 U.S. 930 (1969); Flippo v. Tennessee Valley Auth., 486 F.2d 612 (5th Cir. 1973).

The appeal is without arguable merit and thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2.[5]

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[5]Filed and entered in the United States Court of Appeals for the Fifth Circuit March 23, 1994.